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14

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17

18 VALERIE BROOKS, individually and
on behalf of all others similarly situated,
19

20 Plaintiff,

21 vs

22 BOILING CRAB FRANCHISE CO.,
LLC, a California Limited Liability
company; and DOES 1 to 10, inclusive,
23

24 Defendant.
25
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Case No. 2:20-cv-01390-JAM-CKD
Honorable John A. Mendez
Honorable Carolyn K. Delaney

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER –
CONFIDENTIAL DESIGNATION
ONLY**

Action Filed: July 9, 2020
Trial Date: None Set

1 **IT IS HEREBY STIPULATED** by and between the Parties herein, by and
2 through their respective counsel of record, that in order to facilitate the exchange of
3 information and documents which may be subject to confidentiality limitations on
4 disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as
5 follows:

6 1. In this Stipulation and Protective Order, the words set forth below shall
7 have the following meanings:

8 a. “Proceeding” means the above-entitled proceeding No. 2:20-cv-01390-
9 JAM-CKD.

10 b. “Court” means the Hon. John A. Mendez, or any other judge to which
11 this Proceeding may be assigned, including Court staff participating in such
12 proceedings.

13 c. “Confidential” means any information which is in the possession of a
14 Designating Party who believes in good faith that such information is entitled to
15 confidential treatment under applicable law.

16 d. “Confidential Materials” means any Documents, Testimony or
17 Information as defined below designated as “Confidential” pursuant to the
18 provisions of this Stipulation and Protective Order.

19 e. “Designating Party” means the Party that designates Materials as
20 “Confidential.”

21 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal,
22 divulge, give, or make available Materials, or any part thereof, or any information
23 contained therein.

24 g. “Documents” means (i) any “Writing,” “Original,” and
25 “Duplicate” as those terms are defined by Federal Rules of Evidence, which have
26 been produced leading up to litigation or in discovery in this Proceeding by any
27 person, and (ii) any copies, reproductions, or summaries of all or any part of the
28 foregoing.

1 h. “Information” means the content of Documents or Testimony.

2 i. “Testimony” means all depositions, declarations or other
3 testimony taken or used in this Proceeding.

4 2. The Designating Party shall have the right to designate as
5 “Confidential” any Documents, Testimony or Information that the Designating Party
6 in good faith believes to contain non-public information that is entitled to
7 confidential treatment under applicable law.

8 3. The entry of this Stipulation and Protective Order does not alter, waive,
9 modify, or abridge any right, privilege or protection otherwise available to any Party
10 with respect to the discovery of matters, including but not limited to any Party’s
11 right to assert the attorney-client privilege, the attorney work product doctrine, or
12 other privileges, or any Party’s right to contest any such assertion.

13 4. Any Documents, Testimony or Information to be designated as
14 “Confidential” must be clearly so designated before the Document, Testimony or
15 Information is Disclosed or produced. The parties may agree that the case name and
16 number are to be part of the “Confidential” designation. The “Confidential”
17 designation should not obscure or interfere with the legibility of the designated
18 Information.

19 a. For Documents (apart from transcripts of depositions or other
20 pretrial or trial proceedings), the Designating Party must affix the legend
21 “Confidential” on each page of any Document containing such designated
22 Confidential Material.

23 b. For Testimony given in depositions the Designating Party may
24 either:

25 i. identify on the record, before the close of the deposition,
26 all “Confidential” Testimony, by specifying all portions of the Testimony that
27 qualify as “Confidential;” or
28

1 ii. designate the entirety of the Testimony at the deposition as
2 “Confidential” (before the deposition is concluded) with the right to identify more
3 specific portions of the Testimony as to which protection is sought within 30 days
4 following receipt of the deposition transcript. In circumstances where portions of the
5 deposition Testimony are designated for protection, the transcript pages containing
6 “Confidential” Information may be separately bound by the court reporter, who
7 must affix to the top of each page the legend “Confidential,” as instructed by the
8 Designating Party.

9 c. For Information produced in some form other than Documents,
10 and for any other tangible items, including, without limitation, compact discs or
11 DVDs, the Designating Party must affix in a prominent place on the exterior of the
12 container or containers in which the Information or item is stored the legend
13 “Confidential.” If only portions of the Information or item warrant protection, the
14 Designating Party, to the extent practicable, shall identify the “Confidential”
15 portions.

16 5. The inadvertent production by any of the undersigned Parties or non-
17 Parties to the Proceedings of any Document, Testimony or Information during
18 discovery in this Proceeding without a “Confidential” designation, shall be without
19 prejudice to any claim that such item is “Confidential” and such Party shall not be
20 held to have waived any rights by such inadvertent production. In the event that any
21 Document, Testimony or Information that is subject to a “Confidential” designation
22 is inadvertently produced without such designation, the Party that inadvertently
23 produced the document shall give written notice of such inadvertent production
24 within twenty (20) days of discovery of the inadvertent production, together with a
25 further copy of the subject Document, Testimony or Information designated as
26 “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such
27 Inadvertent Production Notice, the Party that received the inadvertently produced
28 Document, Testimony or Information shall promptly destroy the inadvertently

1 produced Document, Testimony or Information and all copies thereof, or, at the
2 expense of the producing Party, return such together with all copies of such
3 Document, Testimony or Information to counsel for the producing Party and shall
4 retain only the “Confidential” designated Materials. Should the receiving Party
5 choose to destroy such inadvertently produced Document, Testimony or
6 Information, the receiving Party shall notify the producing Party in writing of such
7 destruction within ten (10) days of receipt of written notice of the inadvertent
8 production. This provision is not intended to apply to any inadvertent production of
9 any Information protected by attorney-client or work product privileges. In the event
10 that this provision conflicts with any applicable law regarding waiver of
11 confidentiality through the inadvertent production of Documents, Testimony or
12 Information, such law shall govern.

13 6. In the event that counsel for a Party receiving Documents, Testimony
14 or Information in discovery designated as “Confidential” objects to such designation
15 with respect to any or all of such items, said counsel shall advise counsel for the
16 Designating Party, in writing, of such objections, the specific Documents,
17 Testimony or Information to which each objection pertains, and the specific reasons
18 and support for such objections (the “Designation Objections”). Counsel for the
19 Designating Party shall have thirty (30) days from receipt of the written Designation
20 Objections to either (a) agree in writing to de-designate Documents, Testimony or
21 Information pursuant to any or all of the Designation Objections and/or (b) file a
22 motion with the Court seeking to uphold any or all designations on Documents,
23 Testimony or Information addressed by the Designation Objections (the
24 “Designation Motion”). Pending a resolution of the Designation Motion by the
25 Court, any and all existing designations on the Documents, Testimony or
26 Information at issue in such Motion shall remain in place. The Designating Party
27 shall have the burden on any Designation Motion of establishing the applicability of
28 its “Confidential” designation. In the event that the Designation Objections are

1 neither timely agreed to nor timely addressed in the Designation Motion, then such
2 Documents, Testimony or Information shall be de-designated in accordance with the
3 Designation Objection applicable to such material.

4 7. Access to and/or Disclosure of Confidential Materials designated as
5 “Confidential” shall be permitted only to the following persons:

6 a. the Court;

7 b. (1) Attorneys of record in the Proceedings and their affiliated
8 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who
9 are actively involved in the Proceedings and are not employees of any Party. (2) In-
10 house counsel to the undersigned Parties and the paralegal, clerical and secretarial
11 staff employed by such counsel. Provided, however, that each non-lawyer given
12 access to Confidential Materials shall be advised that such Materials are being
13 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective
14 Order and that they may not be Disclosed other than pursuant to its terms;

15 c. those officers, directors, partners, members, employees and
16 agents of all non-designating Parties that counsel for such Parties deems necessary
17 to aid counsel in the prosecution and defense of this Proceeding; provided, however,
18 that prior to the Disclosure of Confidential Materials to any such officer, director,
19 partner, member, employee or agent, counsel for the Party making the Disclosure
20 shall deliver a copy of this Stipulation and Protective Order to such person, shall
21 explain that such person is bound to follow the terms of such Order, and shall secure
22 the signature of such person on a statement in the form attached hereto as Exhibit A;

23 d. court reporters in this Proceeding (whether at depositions,
24 hearings, or any other proceeding);

25 e. any deposition, trial or hearing witness in the Proceeding who
26 previously has had access to the Confidential Materials, or who is currently or was
27 previously an officer, director, partner, member, employee or agent of an entity that
28 has had access to the Confidential Materials;

1 f. any deposition or non-trial hearing witness in the Proceeding
2 who previously did not have access to the Confidential Materials; provided,
3 however, that each such witness given access to Confidential Materials shall be
4 advised that such Materials are being Disclosed pursuant to, and are subject to, the
5 terms of this Stipulation and Protective Order and that they may not be Disclosed
6 other than pursuant to its terms;

7 g. mock jury participants, provided, however, that prior to the
8 Disclosure of Confidential Materials to any such mock jury participant, counsel for
9 the Party making the Disclosure shall deliver a copy of this Stipulation and
10 Protective Order to such person, shall explain that such person is bound to follow
11 the terms of such Order, and shall secure the signature of such person on a statement
12 in the form attached hereto as Exhibit A.

13 h. outside experts or expert consultants consulted by the
14 undersigned Parties or their counsel in connection with the Proceeding, whether or
15 not retained to testify at any oral hearing; provided, however, that prior to the
16 Disclosure of Confidential Materials to any such expert or expert consultant, counsel
17 for the Party making the Disclosure shall deliver a copy of this Stipulation and
18 Protective Order to such person, shall explain its terms to such person, and shall
19 secure the signature of such person on a statement in the form attached hereto as
20 Exhibit A. It shall be the obligation of counsel, upon learning of any breach or
21 threatened breach of this Stipulation and Protective Order by any such expert or
22 expert consultant, to promptly notify counsel for the Designating Party of such
23 breach or threatened breach; and

24 i. any other person that the Designating Party agrees to in writing.

25 8. Confidential Materials shall be used by the persons receiving them only
26 for the purposes of preparing for, conducting, participating in the conduct of, and/or
27 prosecuting and/or defending the Proceeding, and not for any business or other
28 purpose whatsoever.

1 9. Any Party to the Proceeding (or other person subject to the terms of this
2 Stipulation and Protective Order) may ask the Court, after appropriate notice to the
3 other Parties to the Proceeding, to modify or grant relief from any provision of this
4 Stipulation and Protective Order.

5 10. Entering into, agreeing to, and/or complying with the terms of this
6 Stipulation and Protective Order shall not:

7 a. operate as an admission by any person that any particular
8 Document, Testimony or Information marked “Confidential” contains or reflects
9 trade secrets, proprietary, confidential or competitively sensitive business,
10 commercial, financial or personal information; or

11 b. prejudice in any way the right of any Party (or any other person
12 subject to the terms of this Stipulation and Protective Order):

13 i. to seek a determination by the Court of whether any
14 particular Confidential Material should be subject to protection as “Confidential”
15 under the terms of this Stipulation and Protective Order; or

16 ii. to seek relief from the Court on appropriate notice to all
17 other Parties to the Proceeding from any provision(s) of this Stipulation and
18 Protective Order, either generally or as to any particular Document, Material or
19 Information.

20 11. Any Party to the Proceeding who has not executed this Stipulation and
21 Protective Order as of the time it is presented to the Court for signature may
22 thereafter become a Party to this Stipulation and Protective Order by its counsel’s
23 signing and dating a copy thereof and filing the same with the Court, and serving
24 copies of such signed and dated copy upon the other Parties to this Stipulation and
25 Protective Order.

26 12. Any Information that may be produced by a non-Party witness in
27 discovery in the Proceeding pursuant to subpoena or otherwise may be designated
28 by such non-Party as “Confidential” under the terms of this Stipulation and

1 Protective Order, and any such designation by a non-Party shall have the same force
2 and effect, and create the same duties and obligations, as if made by one of the
3 undersigned Parties hereto. Any such designation shall also function as a consent by
4 such producing Party to the authority of the Court in the Proceeding to resolve and
5 conclusively determine any motion or other application made by any person or Party
6 with respect to such designation, or any other matter otherwise arising under this
7 Stipulation and Protective Order.

8 13. If any person subject to this Stipulation and Protective Order who has
9 custody of any Confidential Materials receives a subpoena or other process
10 (“Subpoena”) from any government or other person or entity demanding production
11 of Confidential Materials, the recipient of the Subpoena shall promptly give notice
12 of the same by electronic mail transmission, followed by either express mail or
13 overnight delivery to counsel of record for the Designating Party, and shall furnish
14 such counsel with a copy of the Subpoena. Upon receipt of this notice, the
15 Designating Party may, in its sole discretion and at its own cost, move to quash or
16 limit the Subpoena, otherwise oppose production of the Confidential Materials,
17 and/or seek to obtain confidential treatment of such Confidential Materials from the
18 subpoenaing person or entity to the fullest extent available under law. The recipient
19 of the Subpoena may not produce any Documents, Testimony or Information
20 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

21 14. Nothing in this Stipulation and Protective Order shall be construed to
22 preclude either Party from asserting in good faith that certain Confidential Materials
23 require additional protection. The Parties shall meet and confer to agree upon the
24 terms of such additional protection.

25 15. If, after execution of this Stipulation and Protective Order, any
26 Confidential Materials submitted by a Designating Party under the terms of this
27 Stipulation and Protective Order is Disclosed by a non-Designating Party to any
28 person other than in the manner authorized by this Stipulation and Protective Order,

1 the non-Designating Party responsible for the Disclosure shall bring all pertinent
2 facts relating to the Disclosure of such Confidential Materials to the immediate
3 attention of the Designating Party.

4 16. This Stipulation and Protective Order is entered into without prejudice
5 to the right of any Party to knowingly waive the applicability of this Stipulation and
6 Protective Order to any Confidential Materials designated by that Party. If the
7 Designating Party uses Confidential Materials in a non-Confidential manner, then
8 the Designating Party shall advise that the designation no longer applies.

9 17. Where any Party seeks to include any Confidential Materials, or
10 Information derived from Confidential Materials, in any motion or other proceeding,
11 the party shall follow the Local Rules for the Eastern District of California, Rule
12 141, to obtain a written order from the Court permitting the specific Confidential
13 Materials, or Information derived from Confidential Materials, to be filed under
14 seal, upon a showing that rebuts the presumption of public access.

15 18. The Parties shall meet and confer regarding the procedures for use of
16 Confidential Materials at trial and shall move the Court for entry of an appropriate
17 order.

18 19. Nothing in this Stipulation and Protective Order shall affect the
19 admissibility into evidence of Confidential Materials, or abridge the rights of any
20 person to seek judicial review or to pursue other appropriate judicial action with
21 respect to any ruling made by the Court concerning the issue of the status of
22 Protected Material.

23 20. This Stipulation and Protective Order shall continue to be binding after
24 the conclusion of this Proceeding and all subsequent proceedings arising from this
25 Proceeding, except that a Party may seek the written permission of the Designating
26 Party or may move the Court for relief from the provisions of this Stipulation and
27 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction
28

1 to enforce, modify, or reconsider this Stipulation and Protective Order, even after
2 the Proceeding is terminated.

3 21. Upon written request made within thirty (30) days after the settlement
4 or other termination of the Proceeding, the undersigned Parties shall have thirty (30)
5 days to either (a) promptly return to counsel for each Designating Party all
6 Confidential Materials and all copies thereof (except that counsel for each Party may
7 maintain in its files, in continuing compliance with the terms of this Stipulation and
8 Protective Order, all work product, and one copy of each pleading filed with the
9 Court [and one copy of each deposition together with the exhibits marked at the
10 deposition]), (b) agree with counsel for the Designating Party upon appropriate
11 methods and certification of destruction or other disposition of such Confidential
12 Materials, or (c) as to any Documents, Testimony or other Information not
13 addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order
14 regarding proper preservation of such Materials. To the extent permitted by law the
15 Court shall retain continuing jurisdiction to review and rule upon the motion
16 referred to in sub-paragraph (c) herein.

17 22. After this Stipulation and Protective Order has been signed by counsel
18 for all Parties, it shall be presented to the Court for entry. Counsel agree to be
19 bound by the terms set forth herein with regard to any Confidential Materials that
20 have been produced before the Court signs this Stipulation and Protective Order.

21 23. The Parties and all signatories to the Certification attached hereto as
22 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
23 approval and entry by the Court. In the event that the Court modifies this Stipulation
24 and Protective Order, or in the event that the Court enters a different Protective
25 Order, the Parties agree to be bound by this Stipulation and Protective Order until
26 such time as the Court may enter such a different Order. It is the Parties' intent to
27 be bound by the terms of this Stipulation and Protective Order pending its entry so
28

1 as to allow for immediate production of Confidential Materials under the terms
2 herein.

3 This Stipulation and Protective Order may be executed in counterparts.
4

5 Dated: May 11, 2022

6 WILSHIRE LAW FIRM, PLC
7

8 By /s/ Binyamin I. Manoucheri (as authorized on
9 May 5, 2022)

10 THIAGO M. COELHO
11 BINYAMIN I. MANOUCHERI
12 Attorneys for Plaintiff
13 VALERIE BROOKS

14 Dated: May 11, 2022

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
16

17 By /s/ Michael J. Chilleen

18 MICHAEL J. CHILLEEN
19 Attorneys for Defendant
20 BOILING CRAB FRANCHISE CO., LLC
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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: May 11, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____
[NAME], _____ [POSITION AND EMPLOYER],
am about to receive Confidential Materials supplied in connection with the
Proceeding, Valerie Brooks v. Boiling Crab Franchise Co., LLC, et al., United
States District Court, Eastern District of California, Case No. 2:20-cv-01390-JAM-
CKD. I certify that I understand that the Confidential Materials are provided to me
subject to the terms and restrictions of the Stipulation and Protective Order filed in
this Proceeding. I have been given a copy of the Stipulation and Protective Order; I
have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and
Protective Order, including any notes or other records that may be made regarding
any such materials, shall not be Disclosed to anyone except as expressly permitted
by the Stipulation and Protective Order. I will not copy or use, except solely for the
purposes of this Proceeding, any Confidential Materials obtained pursuant to this
Protective Order, except as provided therein or otherwise ordered by the Court in the
Proceeding.

I further understand that I am to retain all copies of all Confidential Materials
provided to me in the Proceeding in a secure manner, and that all copies of such
Materials are to remain in my personal custody until termination of my participation
in this Proceeding, whereupon the copies of such Materials will be returned to
counsel who provided me with such Materials.

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1 I declare under penalty of perjury, under the laws of the United States, that
2 the foregoing is true and correct. Executed this _____ day of _____, 2022,
3 at _____.

4
5 Dated: _____, 2022

6
7 _____
Signature

8
9 _____
Address

10
11 _____
City, State, Zip

12
13 _____
Telephone Number